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WM. R. STANSBURY
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Supreme Court of the United States

OCTOBER TERM, 1924

No. 1256 [redacted]8 122

SAMUEL A. MYERS and HARRY MYERS
AS S. A. & H. MYERS,

Petitioners,

v.

INTERNATIONAL TRUST COMPANY,

Respondent.

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION.

JOHN R. LAZENBY,
For Respondent.

Supreme Court of the United States

OCTOBER TERM, 1924.

SAMUEL A. MYERS and HARRY MYERS AS S. A. & H. MYERS, v. INTERNATIONAL TRUST COMPANY.	No. 1256

Memorandum in Support of Motion for Reconsideration.

The International Trust Company respectfully asks for a reconsideration of the order granting the writ of certiorari in the above case, on the ground that at the time when the Court considered the petion it did not have before it the complete record, as two of the essential exhibits were omitted.

The partnership of S. A. & H. Myers, for a loan, gave ten (10) notes totalling the sum of $20,000., to the International Trust Company and Samuel Myers endorsed the ten and Harry Myers endorsed nine.

This suit was brought to recover on the endorsements. A petition in Bankruptcy was filed against the partnership in the United States District Court for the District of Massachusetts. This petition was Exhibit 2 in the case.

Debtors' Schedules were filed by the debtors, in which the Myers swore they had no individual debts, and set out the International Trust Company as a creditor to the extent of $20,000. for notes. The

Trust Company was not listed as a creditor on account of the endorsements. These Schedules were Exhibit 3.

There was an offer in composition in which the alleged bankrupts stated that they had filed "a list of creditors to be filed by bankrupts" (Exhibit 5, Record, p. 19).

At the argument before the Supreme Judicial Court of Massachusetts, these Exhibits 2 and 3 were presented to the Court in conformity with the stipulation set forth on page 17 of the Record.

When the record for the petition for a writ of certiorari was prepared a stipulation as to the contents of the record was entered into, in which it was agreed, among other things, "that Exhibits No. 2, Creditors' Petition, and Exhibit No. 3, Debtors' Schedules, shall not be printed but shall be transmitted to the United States Supreme Court as part of the record" (Record, p. 35).

These exhibits were not transmitted to this Court as part of the record and were not presented to this Court when the petition was presented. They were not before this Court at the time the petition was considered and at the time this Court granted the writ, on June 1, 1925.

On the contrary, they were obtained by the respondent from the Reporter of Decisions of the Massachusetts Supreme Judicial Court on June 3, 1925, and sent by the respondent with this motion to this Court on June 4, 1925.

These exhibits were a necessary part of the record. They are the foundation of the Trust Company's case; they were before the Massachusetts Court; they ought to have been before this Court to enable this Court to determine what Federal question was raised by the record.

The question of law involved was the effect of the confirmation of an offer in composition. It was essential to determine to what creditors the offer was made, and the petition and schedules were the only evidence of the list of creditors. The Massachusetts Court found them essential to its decision.

It needs no argument to support a request to this Court that it require that a stipulation entered into and filed in this Court be carried out.

Justice and fairness require that no part of a record be withheld from this Court, especially so when the part withheld is of such importance as these two exhibits.

Respectfully submitted,

INTERNATIONAL TRUST COMPANY,
By JOHN R. LAZENBY,
Its Attorney.

COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss:

A copy of the above memorandum in support of the motion was served by me upon Edward F. McClennen, by leaving at his office, 161 Devonshire Street, Boston, Massachusetts, two copies of the same, on the 11th day of June, 1925.

Stuart Montgomery

Subscribed and sworn to before me this 11th day of June, 1925.

Elmer A. Beeler.
Notary Public
My commission expires Feb. 27, 19

Notarial Seal.